Madhya Pradesh High Court
Smt. Mamta Jaiswal vs Rajesh Jaiswal on 24 March, 2000
Equivalent citations: II (2000) DMC 170
Author: J Chitre
Bench: J Chitre
ORDER J.G. Chitre, J.

1. The petitioner Mamta Jaiswal has acquired qualification as MSc. M.C. M.Ed, and was working in Gulamnabi Azad. College of Education, Pusad, Distt. Yeotmal (MHS). The husband Rajesh Jaiswal is sub-engineer serving in Pimampur factory. The order which is under challenge by itself shows that Mamta Jaiswal, the wife was earning Rs. 4,000/- as salary when she was in service in the year 1994. The husband Rajesh Jaiswal is getting salary of Rs. 5,852/-. The Matrimonial Court awarded alimony of Rs. 800/- to Mamta Jaiswal per month as pendente lite alimony, Rs. 400/- per month has been awarded to their daughter Ku, Diksha Jaiswal. Expenses necessary for litigation has been awarded to the tune of Rs. 1,500/-. The Matrimonial Court has directed Rajesh Jaiswal to pay travelling expenses to Mamta Jaiswal whenever sheattends Court for hearing of them matrimorial petition pending between them. Matrimonial petition has been filed by husband Rajesh Jaiswal for getting divorce from Mamta Jaiswal on the ground of cruelty. This revision petition arises on account of rejection of the prayer made by Mamta Jaiswal when she prayed that she be awarded the travelling expenses of one adult attendant who is to come with her for attending Matrimonial Court.

2. Mr. S.K. Nigam, pointed out that the petition is mixed natured because if at all it is touching provisions of Section 26 of Hindu Marriage Act, 1955 (hereinafter referred to as Act for convenience) then that has to be filed within a month. Mr. Mev clarified that it is a revision petition mainly meant for challenging pendente lite alimony payable by the husband in view of Section 24 of the Act. He pointed out the calculations of days in obtaining the certified copies of the impugned order. In view of that, it is hereby declared that this revision petition is within limitation, entertainable, keeping in view the spirit of the Act and Section 24 of it.

3. A wife is entitled to get pendente lite alimony from the husband in view of provisions of Section 24 of the Act if she happens to be a person who has no independent income sufficient for her to support and to make necessary expenses of the proceedings. The present petitioner, the wife, Mamta Jaiswal has made a . prayer that she should be paid travelling expenses of one adult member of her family who would be coming to Matrimonial Court at Indore as her attendant. Therefore, the question arises firstly, whether a woman having such qualifications and once upon a time sufficient income is entitled to claim pendente lite alimony from her husband in a matrimonial petition which has been filed against her for divorce on the ground of cruelty. Secondly, whether such a woman is entitled to get the expenses reimbursed from her husband if she brings one adult attendant alongwith her for attending the Matrimonial Court from the place where she resides or a distant place.

4. In the present case there has been debate between the spouses about their respective income. The husband Rajesh has averred that Mamta is still serving and earning a salary which is sufficient enough to allow her to support herself. Wife Mamta is contending that she is not in service

presently. Wife Mamta is contending that Rajesh, the husband is having salary of Rs. 5,852/- per month. Husband Rajesh is contending that Rs. 2,067/- out his salary, are deducted towards instalment of repayment of house loan. He has contended that Rs. 1,000/- are spent in his to and fro transport from Indore to Pithampur. He has also detailed by contending that Rs. 200/- are being spent for the medicines for his ailing father. And, lastly, he has contended that by taking into consideration these deductions as meagre amount remains available for his expenditure.

5. It has been submitted that Mamta Jaiswal was getting Rs. 2,000/- as salary in the year 1994 and she has been removed from the job of lecturer. No further details are available at this stage. Thus, the point is in a arena of counter allegations of these fighting spouses who are eager to peck each other.

6. In view of this, the question arises, as to in what way Section 24 of the Act has to be interpreted: Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure ? Whether such spouse should be permitted to get pendente lite alimony at higher rate from other spouse in such condition ? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself Or herself inspite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversory by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M.Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service ? It really puts a bug question which is to be answered by Mamta Jaiswal with sufficient congent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice verssa also. If a husband well qualified, sufficient enough to earn, site idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversory who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity

to support and maintain himself or herself That cannot be treated to be aim, goal of Section 24. It is indirectly against healthyness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient effort are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.

7. In the present case, wife Mamta Jaiswal, has been awarded Rs. 800/- per month as pendente lite alimony and has been awarded the relief of being reimbursed from husband whenever she makes a trip to Indore from Pusad, Distt. Yeotmal for attending Matrimonial Court for date of hearing. She is well qualified woman once upon time abviously serving as lecturer in Education College. How she can be equated with a gullible woman of village ? Needless to point out that a woman who is educated herself with Master's degree in Science, Masters Degree in Education,. would not feel herself alone in travelling from Pusad to Indore, when atleast a bus service is available as mode of transport. The sumbission made on behalf of Mamta, the wife, is not palatable and digestable. This smells of oblique intention of putting extra financial burden on the husband. Such attempts are to be discouraged.

8. In fact, well qualified spouses desirous of remaining idle, not making efforts for the purpose of finding out a source of livelihood, have to be discouraged, if the society wants to progress. The spouses who are quarelling and coming to the Court in respect of matrimonial disputes, have to be guided for the purpose of amicable settlement as early as possible and, therefore, grant of luxurious, excessive facilities by way of pendente lite alimony and extra expenditure has to be discouraged. Even then, if the spouses do not think of amicable settlement, the Matrimonial Courts should dispose of the matrimonial petitiorisas early as possible. The Matrimonial Courts have to keep it in mind that the quarells between the spouses create dangerous impact on minds of their offsprings of such wedlocks. The offsprings do not understand as to where they should see ? towards father or towards mother ? By seeing them both fighting, making allegations against each other, they get bewildered. Such bewilderedness and loss of affection of parents is likely to create a trauma on their minds and brains. This frustration amongst children of tender ages is likely to create complications which would ruin their future. They cannot be exposed to such danger on account of such fighting parents.

9. In the present case the husband has not challenged the order. Therefore, no variation or modification in it is necessary though this revision petition stands dismissed. The Matrimonial Court is hereby directed to decide the matrimonial petition which is pending amongst these two spouses as early as possible. The Matrimonial Court is directed to submit monthwise report about the progress of the said matrimonial petition to this Court so as to secure a continuous, unobstructed progress of matrimonial petition. No order as to costs. The amount of pendente lite alimony payable to Mamta Jaiswal by husband Rajesh Jaiswal should be deposited by him within a month by counting the date from the date of order. The failure on this aspect would result in dismissal of his matrimonial petition. He should continue payment of Rs. 400/- per month to his daughter Ku. Diksha Jaiswal right from the date of presentation of application of her maintenance i.e. 14.5.1998. That has to be also deposited within a month. He may take out sufficient money for that from his savings or take a loan from some good concern or loan granting agencies. Failure in this aspect also would result in dismissal of his petition. C.C.